

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

SUSAN BECKER,

Plaintiff,

v.

UNITED STATES POSTAL SERVICE,
POSTMASTER GENERAL LOUIS DEJOY,
MARK DIMONDSTEIN, PRESIDENT OF
THE AMERICAN POSTAL WORKERS,
AND FREDRIC V. ROLANDO, PRESIDENT
OF NATIONAL ASSOCIATION LETTER
CARRIERS,

Defendant.

8:20CV00394

JOINT MOTION TO STRIKE
AMENDED COMPLAINT
(FILINGS 23, 27)

Fredric V. Rolando, United States Postal Service, and Postmaster Louis DeJoy,
Defendants move the Court to strike two pleadings, Filing 23 and Filing 27. Plaintiff is pro se.

On December 9, 2020, Plaintiff filed Filing No. 23, and on December 10, 2020, Plaintiff filed Filing No. 27, an identical copy of what she filed on December 9, 2020. While captioned as “reply on dismissal USPS”, the documents are drafted as an Amended Complaint and raise new claims of wire fraud against Defendants.

The Court should strike the Plaintiff’s Amended Complaint. Rule 15(a)(1) allows a plaintiff to amend once as a matter of course. However, a party may only amend as a matter of course within certain timeframes. A plaintiff may amend as a matter of course within:

- (a) 21 days after service of the complaint; or
- (b) If the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), whichever is earlier.

Fed. R. Civ. P. Rule 15(a)(1).

In this case, Defendant Fredric V. Rolando filed a Motion to dismiss pursuant to Fed. R. Civ. P. Rules 12(b)(2) and 12(b)(6) on November 9, 2020. (Filing 13). Defendants USPS and Postmaster DeJoy filed a Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b) on December 9, 2020. Plaintiff's amended complaint was not filed within 21 days of Defendant Rolando's motion to dismiss, which motion was filed on November 9, 2020.

For all other amendments, a plaintiff may amend her pleading only with the opposing party's written consent or the court's leave. Fed. R. Civ. P. 15(2). Defendants did not consent to the amended complaint. Further, Plaintiff did not seek leave of the Court to amend pursuant to Rule 15(a)(2). Since the Court has not granted Plaintiff leave to file an Amended Complaint, the Court should strike Filings 23 and 27 because they are premature and contrary to Rule 15.

FREDRIC V. ROLANDO, Defendant,

s/ Kate M. Swearengen

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And

UNITED STATES POSTAL SERVICE, and
POSTMASTER GENERAL LOUIS DEJOY,
Federal Defendants

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